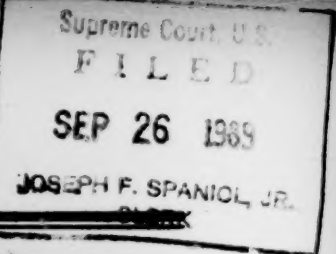


89-382

NO. _____



IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989

ISIAH SMITH
EDDIE THOMPSON, JR.

Petitioners

vs.

KENTUCKY DEMOCRATIC PARTY, PAT GOINS,
DEMOCRATIC NATIONAL COMMITTEE,
COMPLIANCE ASSISTANCE COMMITTEE,
STANDING COMMITTEE ON CREDENTIALS,
K. LEROY IRVIS,

Respondents

BRIEF IN OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI ON BEHALF OF
DEMOCRATIC NATIONAL COMMITTEE,
COMPLIANCE COMMITTEE AND
STANDING COMMITTEE ON CREDENTIALS

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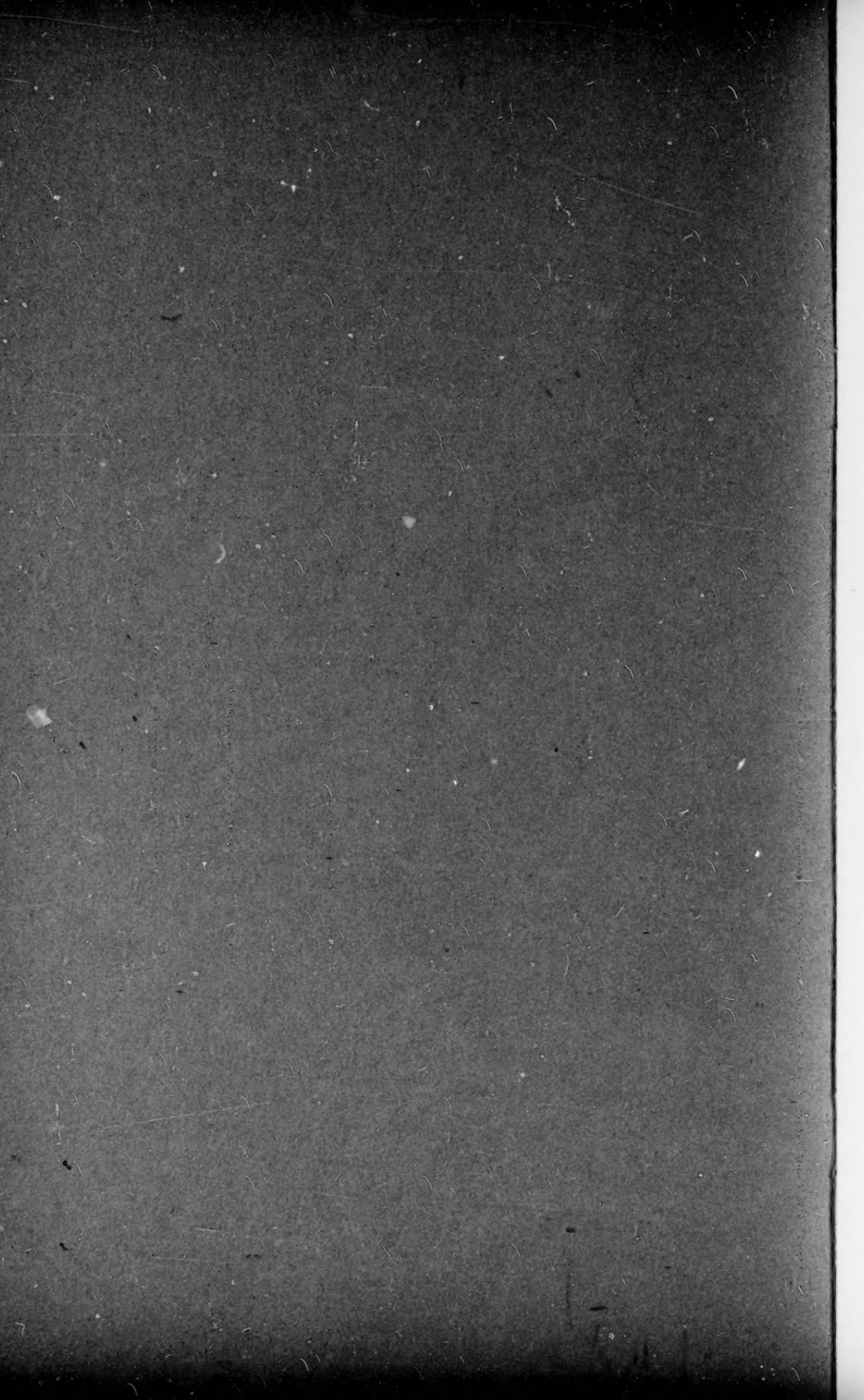


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STATEMENT OF THE CASE

On June 2, 1989, Eddie Thompson and Isiah Smith filed a complaint for injunctive relief against the Kentucky Democratic Party (KDP) and the Democratic National Committee (DNC) to prevent them from recognizing any delegation from Kentucky sent to the Democratic National Convention to be held in July of 1988. Out of pages of "gobbledegook" generated by Thompson and Smith their argument can be stated as follows: The Democratic Party Rules

failed to allocate to blacks convention delegates on a pro rata basis in congressional districts with sparse black populations. They, as black voters in the 4th Congressional District of Kentucky, which has a sparse black population, were prevented by party rules from voting for or presenting themselves as delegates for Jesse Jackson, candidate for President of the United States. They argue the KDP rules therefore invidiously discriminated against them on the basis of race.

The DNC on behalf of the National Democratic Party provided several methods by which state democratic parties selected delegates to the 1988 Democratic National Convention. These methods employed the primary system, the caucus system, and in Kentucky a mixed primary-caucus system. Kentucky democratic party members participated in the super-tuesday, multi-state primary which operated to select twenty-five (25%) percent of the state's delegates to the July convention and determined which presidential candidates would be eligible to run at the caucus or congressional district-level. The KDP selected twenty-five (25%) percent of its delegates from the primary vote, seventy-five (75%) percent from the caucus, and other delegates from a list of state dignitaries equaling more than one hundred (100%) percent, but mathematics has never daunted politicians. For any candidate to acquire delegates he or she must have garnered at least fifteen (15%) percent of the state wide primary vote and to be able to run at the caucus level the candidate must have received at least fifteen (15%) percent of the primary vote within the congressional district, the geographical boundary of each caucus. (Party Rule 12 A(1), Appendix). Jackson achieved the fifteen (15%) percent threshold in the state-wide primary vote but failed to meet the fifteen (15%) percent threshold in the 4th Congressional District. Thompson and Smith could not vote or present themselves as delegates for Jackson in the caucus for the 4th district where they lived. Apparently they voted for Jackson in the primary thereby helping choose Jackson delegates to the National Convention.

Thompson and Smith claim the party rules which guided this outcome invidiously discriminated against them on the basis of race. Thompson and Smith are black.

SUMMARY OF ARGUMENT

In this case an interpretation of the rules of the Kentucky Democratic Party for delegate selection to the Democratic National Convention involed a nonjusticiable political question.

ARGUMENT

The first argument for denying a writ of certiorari is that the complaint for injunctive relief is moot. The 1988 convention is over and the democrats lost the general election.

The second argument for denying a writ of certiorari is that the relief sought by Thompson and Smith requires the Court to interpret and judge the rules of the Kentucky Democratic Party and Democratic National Committee usually and in this case certainly a political question controversy. Actually, the delegate selection rules of the DNC and KDP assured minority representation at the convention assuming a viable minority candidate as was Jesse Jackson.

The District Court cited several decisions to illustrate the great reluctance of the federal courts to become involved in political party disputes treating those issues as mainly nonjusticiable political questions. *O'Brien v. Brown*, 409 U.S. 1 (1972); *Republican State Central Committee of Arizona v. Ripon Society, Inc.*, 409 U.S. 1222 (1972); *Cousins v. Wigoda*, 419 U.S. 477 (1975); *Bachur v. Democratic National Party*, 836 F.2d 837 (4th Cir. 1987); *Wymbs v. Republican State Executive Committee of Florida*, 719 F.2d 1072 (11th Cir. 1983). They easily disposed of Thompson's and Smith's complaint.

CONCLUSION

This is a frivolous petition. The petition for review on certiorari should be denied.

Respectfully submitted

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APPENDIX

Democratic Party Rule 12 A(1)

12. Fair Reflection of Presidential Preferences

A. Delegates shall be allocated in a fashion that reflects the expressed presidential preference or uncommitted status of the primary voters or, if there is no binding primary, the convention and caucus participants. States shall choose one of the following plans for allocating delegates to presidential candidates at the district level:

(1) Proportional representation. District level delegates shall be allocated in proportion to the percentage of the primary or caucus vote won in that district by each preference, except that preferences falling below a 15% threshold shall not be awarded any delegates.